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C O N F I D E N T I A L SECTION 01 OF 03 ASTANA 001487

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SUBJECT: KAZAKHSTAN: OSCE AMBASSADOR BELIEVES KNB TOOK CONTROL OF THE ZHOVTIS CASE

Classified By: Ambassador Richard E. Hoagland: 1.4 (B), (D)

1. (C) SUMMARY: During a September 4 meeting, the head of the Organization for Security and Cooperation in Europe (OSCE) Center, Ambassador Alexandr Keltchewsky, told the Ambassador Kazakhstan has taken some positive steps in its preparations to become the 2010 OSCE Chairman-in-Office. He added, however, that since February, Kazakhstani authorities violated the OSCE's principles by passing the Law on the Internet and conducting trials not in complete accordance with the legal code. According to Keltchewsky, the OSCE cannot tolerate egregious violations of its principles, such as the Zhovtis case. He said the OSCE Astana Center has hired a lawyer to review Zhovtis' trial, and will comment after completing a review of the proceedings. Keltchewsky expressed hope that during Zhovtis' appeal, the authorities would give him a fair trial, as they would any ordinary citizen.

2. (C) SUMMARY CONTINUED: The important point that emerged from this meeting is that Kazakhstan seems to think it will have a "more successful" OSCE Chairmanship if it silences domestic critics in advance. It is possible that the Committee for National Security (KNB) saw Zhovtis' unfortunate auto accident as a target of opportunity. This is unacceptable, and we will make that point clear to senior officials in Astana. END SUMMARY.

HEAD OF OSCE CENTER PRAISES KAZAKHSTAN MAKING PROGRESS TOWARDS COMMITMENTS

3. (C) The Ambassador met with the head of the Organization for Security and Cooperation in Europe (OSCE) Center, Ambassador Keltchewsky, to discuss his views on Kazakhstan's preparations for the OSCE Chairmanship, and the criminal case against the internationally respected human-rights advocate, Yevgeniy Zhovtis. Keltchewsky said Kazakhstan has taken a number of positive steps toward the OSCE's objective of meaningful, long-term reform. According to Keltchewsky, Kazakhstan's most significant actions include passing the Madrid Commitments legislation, and creating "the Path to Europe" document that clearly spells out Kazakhstan's commitment to pursuing European values. Keltchewsky also emphasized other positive developments, "especially in comparison to the situation in other Central Asian countries," such as the existence of a vibrant civil society, and relatively free press. "The picture of

reform in Kazakhstan is not bleak," Keltchewsky averred. Kazakhstan has created an "open space" for dialogue, in which a strong (albeit not always public) debate is taking place. Keltchewsky also emphasized that Kazakhstan has progressive, reform-seeking leaders in the Ministry of Foreign Affairs (MFA), the Presidential Administration and Parliament, who consider the views of civil society and the international community in policymaking.

14. (C) Despite Kazakhstan's positive steps, however, Keltchewsky noted a troubling trend. He argued that, since February, Kazakhstan has violated OSCE principles by initiating several politically-motivated legal cases, like former BTA bank Chairman Mukhtan Ablyazov and journalist Ramazan Yesergepov, and now against Zhovtis. Keltchewsky admitted that Ablyazov allegedly committed criminal acts, and that Yesergepov might have been paid to publish secret material, which undermines his credibility. Nevertheless, Keltchewsky said, it is unacceptable for the authorities to violate Kazakhstan's legal code, as they appear to have done in the Zhovtis case.

IS PUBLIC OPINION A FOREIGN CONCEPT FOR KAZAKHSTAN?

15. (C) Keltchewsky noted that a fundamental problem leading up to the Zhovtis case has been a tension between the old guard and elements in the government of Kazakhstan who understand and respond to public opinion, civil society, and the views of the international community. Keltchewsky also highlighted the difference between President Nazarbayev's decision to send the Law on Freedom of Religious Freedom to the Constitutional Council (a victory for civil society and the international community) and Nazarbayev's decision to approve the Law on the Internet. Keltchewsky said he was not

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surprised, considering that most people believe the Internet law was designed, however ineffective it will be, to prevent Nazarbayev's exiled ex-son-in-law Rakhat Aliyev from distributing negative information about Nazarbayev via the internet in Kazakhstan. According to Keltchewsky, the string of politically-motivated cases since February, most of which involve the Committee for National Security (KNB), demonstrates that "the KNB and others in the old guard, do not consider reactions from the international community."

THE STRAW THAT BROKE THE CAMEL'S BACK?

16. (C) Keltchewsky told the Ambassador that Zhovtis' case is particularly important because "it is not acceptable for a country that will chair the OSCE to allow flagrant violations of law." Keltchewsky, who has a close relationship with Zhovtis, passed to the Ambassador a document that describes in detail his August 14 meeting with Zhovtis. Zhovtis expressed concern over a trend in restrictions on the rights of defense lawyers and their clients in a number of sensitive cases. Zhovtis said the trend is linked, in his view, with the increasing influence of the conservatives versus the reformists. Zhovtis also told Keltchewsky that the Kazakhstani political and business "diaspora" are preparing a strong September "publicity attack" in the West, particularly in London and Washington. By "diaspora," he meant primarily the London-based exiles -- former BTA Bank Chairman Ablyazov and former Prime Minister Kazhygeldin.

ZHOVTIS BELIEVES HE WAS WARNED

17. (C) During their August 14 meeting, Zhovtis told Keltchewsky that the KNB had reportedly been instructed to find compromising material on himself and his associates prior to and during Kazakhstan's Chairmanship, which could lead to travel restrictions. According to Zhovtis, Ambassador Abdrakhmanov, Head of the Kazakhstani Delegation to the OSCE in Vienna, had asked him about the NGO community's approach in the run-up to the OSCE Chairmanship, and Zhovtis replied that he planned "not to tolerate" any violations of OSCE commitments. About his July 26 accident, Zhovtis told Keltchewsky that before he was declared a suspect the police "worked professionally on the accident case, but the KNB and the prosecutor's office were pressuring the victim's family to testify against him." On August 15, a preliminary investigation concluded Zhovtis could have prevented the accident, and on August 17, the Ministry of the

Interior declared Zhovtis a suspect.

AN ORDINARY CITIZEN?

18. (C) After the OSCE Center in Astana published an August 18 spot report about Zhovtis' accident, Keltchewsky said Abdrakhmanov asked, "Why are you commenting on a normal case involving an ordinary Kazakhstani citizen?" Keltchewsky said he explained that the OSCE published a report only after Zhovtis was named a suspect. "It was clear that strange games were being played in Zhovtis' case," Keltchewsky told the Ambassador. Keltchewsky said there were clear breaches of the law in Zhovtis' trial. Keltchewsky thanked Post for sending its Political Assistant to observe the trial, and said the OSCE has hired a Kazakhstani law firm to review the proceedings. Keltchewsky told the Ambassador that his OSCE Center will release the report and observe monitor how Kazakhstan's civil society reacts before it comments. "The OSCE cannot shape or reform Kazakhstan; Kazakhstan must shape itself, although we are willing to provide assistance," asserted Keltchewsky. Similarly, Keltchewsky said the OSCE plans to defer to its member states to provide initial commentary on the case, although Keltchewsky welcomed initiatives to present "a united front" on this important issue. Keltchewsky said he expressed hope that during Zhovtis' appeal, the authorities would give him a fair trial and treat him "as an ordinary citizen." Keltchewsky said it was virtually certain that Zhovtis' Human Rights Bureau would be awarded a prize for its work in France in November, and said, "maybe this is a game we can play? We can help by making Zhovtis -- and his organization -- as prominent and as popular as possible."

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CONSERVATIVES VS. REFORMERS

19. (C) Keltchewsky acknowledged the need to "manage the fall-out" from the Zhovtis case, and continue to move forward by seeking real solutions. Keltchewsky asked the Ambassador about the U.S. views on how much influence the conservatives have versus the reformers, and, if the case reaches Nazarbayev, how he would likely resolve it. The Ambassador told Keltchewsky he plans to provide senior officials, as soon as he can get appointments, with a frank, even blunt, assessment. Keltchewsky concluded that "in Kazakhstan, my own personal assessment is that the President will not act under pressure, but he also will not act without it."

110. (C) COMMENT: Keltchewsky, whose views largely coincide with ours, is a senior French diplomat of White Russian extraction. The important point that emerged from this meeting is that Kazakhstan seems to think it will have a "more successful" OSCE Chairmanship if it silences domestic critics in advance. It would seem the KNB saw Zhovtis' unfortunate auto accident as a target of opportunity. This is unacceptable, and we will make that point clearly at the first opportunity to Foreign Minister Saudabayev and Presidential Foreign Policy Adviser Sarybai. END COMMENT.

HOAGLAND